

1 THE HONORABLE JAMES ROBART  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON

9 BRADY EDMONDS, on behalf of himself and  
10 those similarly situated,

11 Plaintiff,  
12 vs.

13 AMAZON.COM, INC., a Foreign for Profit  
14 Corporation; AMAZON LOGISTICS, INC., a  
15 Foreign for Profit Corporation; AMAZON.COM  
16 SERVICES, INC., a Foreign for Profit Corporation,

Defendants.

NO. 2:19-cv-01613-JLR

**PLAINTIFF'S REPLY IN SUPPORT OF  
MOTION TO TOLL STATUTE OF  
LIMITATIONS DURING PENDENCY OF  
MOTION FOR ISSUANCE OF NOTICE TO  
SIMILARLY SITUATED INDIVIDUALS**

**NOTED FOR CONSIDERATION**  
**May 29, 2020**

17 I. **INTRODUCTION**

18 Defendants' (or "Amazon's") Opposition to Plaintiff's Motion to Toll the Statute of  
19 Limitations During the Pendency of Motion for Issuance of Notice to Similarly Situated  
20 Individuals ("Opposition") mainly rehashes the arguments Defendants improperly raised in  
21 opposition to Plaintiff's Prediscovery Motion for Issuance of Notice to Similarly Situated  
22 Individuals ("Motion for Notice"). See Dkt. No. 50. Defendants' primary arguments in  
23 opposition to Plaintiff's Motion for Notice were misplaced in the context of conditional  
24 certification, and they are equally misplaced in the context of Plaintiff's Motion to Toll the  
Statute of Limitations ("Motion").

25 In its Opposition, Amazon essentially makes two arguments: 1) that no extraordinary  
26 circumstances exist here to warrant equitable tolling; and 2) that Amazon would be

27  
PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO TOLL STATUTE OF  
LIMITATIONS DURING PENDENCY OF MOTION FOR ISSUANCE OF  
NOTICE TO SIMILARLY SITUATED INDIVIDUALS - 1

Case No.: 2:19-cv-01613-JLR

TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
TEL. 206.816.6603 • FAX 206.319.5450  
www.terrellmarshall.com

1 prejudiced by equitable tolling. Plaintiff's Motion for Notice has been fully briefed as of May  
 2 25, 2020. See Dkt. No. 53. Therefore, Amazon correctly points out that Plaintiff's Motion  
 3 depends on certain conditions that have yet to occur—e.g., a delay by the Court in entering an  
 4 order on Plaintiff's Motion for Notice. Plaintiff acknowledges that no extraordinary  
 5 circumstances will exist if the Court enters an order with regard to Plaintiff's Motion for  
 6 Notice within the next 1-2 months, and Amazon timely produces the information necessary to  
 7 disseminate notice to the proposed class. But Plaintiff's Motion was filed in anticipation of  
 8 delay, and out of an abundance of caution in the event that one, or both, of the conditions  
 9 above do not occur within a time frame that would prevent prejudice to the proposed class  
 10 members. If extraordinary circumstances arise that warrant equitable tolling, Amazon will not  
 11 be prejudiced because they have been aware of the scope of the company's potential liability  
 12 from the date that the collective action complaint was filed.

13 Based on the forgoing, and in the event that there is a significant delay between May  
 14 25, 2020, and the date that the Court ultimately enters its Order on Plaintiff's Motion for  
 15 Notice, or a significant delay in the issuance of notice based on the conduct of Amazon or its  
 16 counsel, Plaintiff respectfully requests that his Motion be granted.

17                   **II.       AUTHORITY AND ARGUMENT**

18 **A. Extraordinary Circumstances Will Exist if There Is a Significant Delay Between the**  
 19 **Time That Plaintiff's Motion for Notice Was Fully Briefed and the Time That Notice Is**  
 20 **Ultimately Issued.**

21 “[C]ourts within the Ninth Circuit have allowed equitable tolling in FLSA actions for the  
 22 delay in deciding a motion for conditional certification or the potential delay that may occur in  
 23 providing the information needed to send notice to the putative class members.” *Casarotto v.*  
 24 *Expl. Drilling, Inc.*, 2015 WL 6080755, at \*6 (D. Mont. Oct. 15, 2015), report and  
 25 recommendation adopted, 2015 WL 8780050 (D. Mont. Dec. 15, 2015); *see also Guy v. Casal*  
 26 *Inst. of Nevada, LLC*, 2014 WL 1899006, at \*3 (D.Nev. May 12, 2014) (“The court's delay in  
 27 deciding the motion for conditional certification, or the potential delay that may occur in

1 providing the information needed to send notice to the class members may justify some  
 2 tolling of the statute of limitations."); *Small v. U. Med. Ctr. of S. Nevada*, 2013 WL 3043454, at  
 3 \*4 (D. Nev. June 14, 2013); *Adams v. Inter-Con Sec. Sys., Inc.*, 242 F.R.D. 530, 543  
 4 (N.D.Cal.2007); *Dualan v. Jacob Transportation Servs., LLC*, 172 F. Supp. 3d 1138, 1154 (D. Nev.  
 5 2016); *Warren v. Twin Islands, LLC*, 2012 WL 346681, at \*4 (D. Idaho Feb. 2, 2012). These  
 6 courts have reasoned that allowing the statute of limitations to be tolled during the pendency  
 7 of a motion for conditional certification balances the interests of both parties. *Adams*, 242  
 8 F.R.D. at 543.

9         Here, Plaintiff's Motion for Notice has been fully briefed as of May 25, 2020. If the  
 10 Court ultimately decides to conditionally certify the proposed class identified in Plaintiff's  
 11 Motion and issues its order within the next 1-2 months, this would not be extraordinary  
 12 circumstance warranting equitable tolling. But Plaintiff anticipates there will be a significant  
 13 delay between the time that Plaintiff's Motion for Notice has been noted for consideration  
 14 and the time the Court ultimately enters its order regarding same.

15         Additionally, even if the Court were to timely enter an order granting Plaintiff's Motion  
 16 for Notice, equitable tolling will still be warranted in the event that Defendants do not timely  
 17 provide contact information for the proposed class members. Although Defendants' position  
 18 that it cannot identify proposed class members is disingenuous, this position confirms the  
 19 likely necessity of equitable tolling. Specifically, in Defendants' Opposition to Plaintiff's Motion  
 20 for Notice, Defendants argue that it could take months to gather the information necessary to  
 21 issue notice to the proposed class. *See* Dkt. No. 50 at 17. Assuming *arguendo* that this  
 22 representation is correct, the delay in issuance of notice to the class members will be no fault  
 23 of their own but due to Amazon's alleged inability to gather class member information  
 24 expeditiously. Under these circumstances, equitable tolling is often granted by district courts  
 25 within this circuit. *Adams*, 242 F.R.D. at 543 ("Faultless potential plaintiffs should not be  
 26 deprived of their legal rights on the basis of a defendant's delay, calculated or otherwise.  
 27

1 Because plaintiffs have diligently pursued their legal rights by soliciting information from  
 2 defendants, and defendant's refusal has delayed that pursuit, equitable tolling is  
 3 appropriate."); *Guy*, 2014 WL 1899006, at \*10 ("to avoid prejudice that may result from any  
 4 delay in providing the addresses of the opt-in class members, the Court will toll the running of  
 5 the statute of limitations from May 5, 2014 until the date that Defendants provide Plaintiff's  
 6 counsel with the last known addresses, email addresses and telephone numbers of the  
 7 potential class members."); *Mowdy v. Beneto Bulk Transp.*, 2008 WL 901546, at \*12 (N.D. Cal.  
 8 Mar. 31, 2008).

9 Accordingly, extraordinary circumstances will exist to the extent that there is a delay  
 10 between the time Plaintiff's Motion was fully briefed and the time the Court untimely enters  
 11 an order in regards to same or if Defendants are unable to provide Plaintiff's counsel with the  
 12 contact information of class members within a reasonable time.

13 **A. Amazon Will Not Be Prejudiced by Equitable Tolling.**

14 Despite their argument to the contrary, Defendants will not be prejudiced by equitable  
 15 tolling because they have been aware of the scope of their potential liability since the  
 16 complaint was filed on October 9, 2019. *Dualan*, 172 F. Supp. 3d at 1154 (finding equitable  
 17 tolling appropriate, in part because, "[Defendant] would not be unfairly prejudiced because it  
 18 was aware from the outset that the scope of its potential liability extends to all shuttle-bus  
 19 drivers who worked for Jacob during the statutory period."); *Kutzback*, 233 F. Supp. 3d at 631  
 20 ("As it appears to the Court that Defendants should have been aware of the potential scope of  
 21 their liability from the date the Complaint was filed, the Court finds that Defendants will not  
 22 be prejudiced by the tolling of the statute of limitations."); *Stickle v. SCI Western Mkt. Support*  
 23 *Ctr., L.P.*, 2008 WL 4446539 at \*22 (D. Ariz. Sept. 30, 2008). Moreover, Defendants were likely  
 24 aware of their scope of liability even prior to Plaintiff filing the instant action based on the fact  
 25 that there have been several similar lawsuits lodged against them, nationwide. Contrary to  
 26 Defendants' contentions, failing to equitably toll the statute of limitations in this case would  
 27

1 prejudice the class members. Equitable tolling under the circumstances in this case would be  
2 consistent with the Supreme Court’s holding in *Hoffmann-La Roche, Inc. v. Sperling*, where the  
3 Court noted that “the inherent benefits of the collective action ‘will disappear’ if plaintiffs are  
4 not notified of the suit before their statute of limitations expires.” *Id.* quoting, *Hoffmann-La*  
5 *Roche, Inc. v. Sperling*, 493 U.S. 165, 170, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989). Certainly, if  
6 there is a significant delay between the time that Plaintiff’s Motion for Notice was fully briefed  
7 and the time that notice is ultimately issued, and that delay cannot be attributed to the class  
8 member, equitable tolling is warranted.

### **III. CONCLUSION**

10 While Plaintiff acknowledges that no extraordinary circumstances currently, Plaintiff has  
11 filed his Motion in anticipation of delays beyond his control and out of abundance of caution  
12 to protect the rights of the proposed class members. Should delays arise that are out of the  
13 class members' control, and they do not receive notice in a timely manner consistent with the  
14 Supreme Court's holding in *Hoffman*, extraordinary circumstances would warrant equitable  
15 tolling.

RESPECTFULLY SUBMITTED AND DATED this 29th day of May, 2020.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Toby J. Marshall, WSBA #32726

Beth E. Terrell, WSBA #26759  
Email: bterrell@terrellmarshall.com  
Toby J. Marshall, WSBA #32726  
Email: tmarshall@terrellmarshall.com  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO TOLL STATUTE OF  
LIMITATIONS DURING PENDENCY OF MOTION FOR ISSUANCE OF  
NOTICE TO SIMILARLY SITUATED INDIVIDUALS - 5**

Case No.: 2:19-cv-01613-JLR

**TERRELL MARSHALL LAW GROUP PLLC**  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
TEL. 206.816.6603 • FAX 206.319.5450  
[www.terrellmarshall.com](http://www.terrellmarshall.com)

1                   Andrew R. Frisch, *Admitted Pro Hac Vice*  
2                   Email: afrisch@forthepeople.com  
3                   Paul M. Botros, *Admitted Pro Hac Vice*  
4                   Email: pbotros@forthepeople.com  
5                   MORGAN & MORGAN, P.A.  
6                   8151 Peters Road, Suite 4000  
7                   Plantation, Florida 33324  
8                   Telephone: (954) WORKERS  
9                   Facsimile: (954) 327-3013

10                  *Attorneys for Plaintiff*

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO TOLL STATUTE OF  
LIMITATIONS DURING PENDENCY OF MOTION FOR ISSUANCE OF  
NOTICE TO SIMILARLY SITUATED INDIVIDUALS - 6

Case No.: 2:19-cv-01613-JLR

TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
TEL. 206.816.6603 • FAX 206.319.5450  
[www.terrellmarshall.com](http://www.terrellmarshall.com)

## CERTIFICATE OF SERVICE

I, Toby J. Marshall, hereby certify that on May 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ryan D. Redekopp, WSBA #36853  
Email: ryan.redekopp@klgates.com  
K&L GATES LLP  
925 Fourth Avenue, Suite 2900  
Seattle, Washington 98104  
Telephone: (206) 623-7580  
Facsimile: (206) 623-7022

Richard Rosenblatt, *Admitted Pro Hac Vice*  
Email: richard.rosenblatt@morganlewis.com  
MORGAN LEWIS & BOCKIUS LLP  
502 Carnegie Center  
Princeton, New Jersey 08540-6241  
Telephone: (609) 919-6600  
Facsimile: (609) 919-6701

Christopher K. Ramsey, *Admitted Pro Hac Vice*  
Email: christopher.ramsey@morganlewis.com  
MORGAN LEWIS & BOCKIUS LLP  
One Oxford Centre, 32nd Floor  
Pittsburgh, Pennsylvania 15219-6401  
Telephone: (412) 560-3300  
Facsimile: (412) 560-7001

### *Attorneys for Defendants*

1 DATED this 29th day of May, 2020.  
2  
3

4 TERRELL MARSHALL LAW GROUP PLLC  
5  
6

7 By: /s/ Toby J. Marshall, WSBA #32726  
8

Toby J. Marshall, WSBA #32726  
Email: tmarshall@terrellmarshall.com  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

*Attorneys for Plaintiff*

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO TOLL STATUTE OF  
LIMITATIONS DURING PENDENCY OF MOTION FOR ISSUANCE OF  
NOTICE TO SIMILARLY SITUATED INDIVIDUALS - 8

Case No.: 2:19-cv-01613-JLR

TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
TEL. 206.816.6603 • FAX 206.319.5450  
[www.terrellmarshall.com](http://www.terrellmarshall.com)